

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 6/27/07

NEW YORK STATE RESTAURANT  
ASSOCIATION,

Plaintiff,

- against -

NEW YORK CITY BOARD OF HEALTH,  
NEW YORK CITY DEPARTMENT OF HEALTH  
AND MENTAL HYGIENE, and Thomas R. Frieden,  
In His Official Capacity as Commissioner  
of the New York State Department of Health  
and Mental Hygiene,

Defendants.

2007 Civ. 5710 (RJH)

**STIPULATION AND ORDER**

WHEREAS, plaintiff New York State Restaurant Association filed a complaint on June 15, 2007; and

WHEREAS, plaintiff filed by order to show cause a motion for (i) a preliminary injunction under Rule 65 of the Federal Rules of Civil Procedure, preliminarily enjoining and restraining Defendants from enforcing New York City Health Code section 81.50 in violation of the First and Fourteenth Amendments; and (ii) a declaratory judgment under Rule 57 of the Federal Rules of Civil Procedure that New York City Health Code section 81.50 is preempted by the Nutritional Labeling and Education Act of 1990, 21 U.S.C. §§ 343, 343-a, and regulations promulgated thereunder by the Food and Drug Administration; and

WHEREAS, on June 15, 2007, the Court entered an order setting the following schedule: defendants' opposition papers are due on June 23, 2007 at 5:00 p.m.; any reply papers are due on June 26, 2007 at 12:00 p.m.; and a hearing is scheduled for June 27, 2007 at 5:00 p.m.; and

WHEREAS, the parties have agreed to a more extended briefing schedule; and

WHEREAS, no prior requests for an adjournment have been made.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED THAT:

1. Defendants' opposition papers shall be filed and served by hand by no later than 5:00 p.m. on July 5, 2007;
2. Defendants' memorandum of law in opposition shall not exceed thirty (30) pages in length;
3. Any reply papers shall be filed and served by hand by no later than 5:00 p.m. on July 19, 2007;
4. Enforcement of New York City Health Code section 81.50 ("section 81.50") shall be stayed until October 1, 2007, such that defendants shall take no steps to enforce section 81.50 against any restaurant or other entity prior to October 1, 2007, including but not limited to, issuing warning letters, notices of violation or violations, making statements on the New York City Department of Health's website or elsewhere indicating that restaurants or other entities are not in compliance with section 81.50, or assessing fines or penalties; and
5. The caption of this action is hereby amended to read as follows (the only change being the substitution of the word "City" for "State" in the title of Defendant Thomas R. Frieden):

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

NEW YORK STATE RESTAURANT  
ASSOCIATION,

Plaintiff,

- against -

2007 Civ. 5710 (RJH)

NEW YORK CITY BOARD OF HEALTH,  
NEW YORK CITY DEPARTMENT OF HEALTH  
AND MENTAL HYGIENE, and Thomas R. Frieden,  
In His Official Capacity as Commissioner  
of the New York City Department of Health  
and Mental Hygiene,

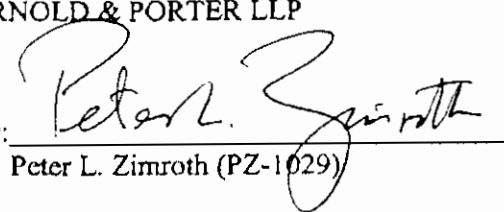
Defendants.

IT IS HEREBY ORDERED that a hearing shall be held before the Honorable Richard J.  
Holwell at Room 17B, United States District Courthouse, 500 Pearl Street, New York, New  
York 10007, on the 25th day of July, 2007, at 5:00 p.m.

Dated: New York, New York  
June 19, 2007

ARNOLD & PORTER LLP

By:

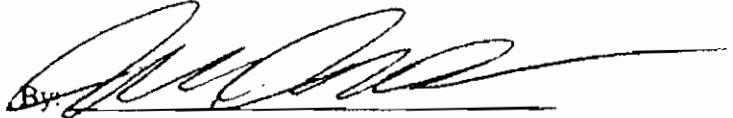
  
Peter L. Zimroth (PZ-1029)

399 Park Avenue  
New York, NY 10022  
Tel. no.: (212) 715-1000  
Fax no.: (212) 715-1399

*Counsel for Plaintiff,  
New York State Restaurant Association*

MICHAEL A. CARDOZO

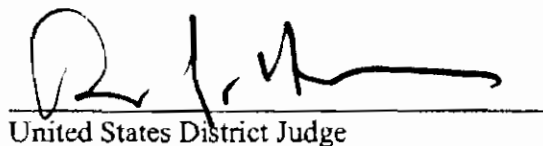
Corporation Counsel of the City of New York  
100 Church Street  
New York, New York 10007  
(212) 442 0573



By: Mark W. Muschenheim (MM 0498)  
Assistant Corporation Counsel

*Counsel for Defendants New York City Board of  
Health, New York City Department of Health and  
Mental Hygiene, and Thomas R. Frieden, In His  
Official Capacity as Commissioner of the New York  
City Department of Health and Mental Hygiene*

SO ORDERED:

  
United States District Judge

6/27/07